

DEPARTMENT OF PESTICIDE REGULATION

James W. Wells, Director

ENF 93-9



1220 N Street, P.O. Box 942871
Sacramento, California 94271-0001

January 26, 1993

TO: COUNTY AGRICULTURAL COMMISSIONERS

SUBJECT: Memorandum of Understanding (MOU) with the Department of Industrial Relations

Attached for your information is a signed copy of the MOU between the Department of Industrial Relations, the Department of Pesticide Regulation, and the California Agricultural Commissioners and Sealers Association (CACASA). Dick Nutter, Mike Tanner, and Jack de Fremery (alternate) were the representatives for CACASA on this project. We want to thank them and all of you for the comments and cooperation in developing this important document. The next phase will again require our joint participation in detailing the specific issues in an implementation plan. The plan should also clarify some of the principles of the MOU.

We will be contacting you soon to solicit representatives and proceed with our responsibilities in completing the implementation plan.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Y. Okumura", followed by a long horizontal line.

Douglas Y. Okumura, Chief
Pesticide Enforcement Branch
(916) 654-0831

Attachment



MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEPARTMENT OF INDUSTRIAL RELATIONS,
THE DEPARTMENT OF PESTICIDE REGULATION, AND
THE CALIFORNIA AGRICULTURAL COMMISSIONERS AND
SEALERS ASSOCIATION
FOR EMPLOYEE PROTECTION AT THE PESTICIDE
WORKPLACE

BACKGROUND

The Department of Industrial Relations (DIR), the Department of Pesticide Regulation (DPR), and the County Agricultural Commissioners (CACs) have responsibilities relating to the protection of workers. The three parties believe that the State will benefit by a unified and cooperative program to assure workers of safe working conditions at the pesticide workplace.

The purpose of this Memorandum of Understanding (MOU) between DIR, DPR and the California Agricultural Commissioners and Sealers Association (CACASA) is to ensure that pesticides are regulated in a manner that protects worker health and safety while recognizing the need for pest control.

SCOPE

This MOU is intended to assure that the respective authorities of DIR, DPR, and the CACs relative to the protection of workers from the potential adverse impacts of pesticides will be exercised in a coordinated and cohesive manner designed to eliminate overlap of activities, duplication of effort, and inconsistency of action, to the benefit of the regulated public, DIR, DPR, and the CACs. To that end, this MOU establishes principles of agreement regarding activities of the signatory parties, identifies primary areas of responsibility and authority between the parties, provides methods and mechanisms necessary to assure ongoing coordination of activities relative to such activities, and outlines a process for the resolution of interagency conflicts.

STATUTORY AUTHORITIES

The California Occupational Safety and Health Act establishes a mandate to assure safe and healthful working conditions for all California workers. DIR is the agency designated by the Labor Code to be responsible for developing and administering the California Occupational Safety and Health Administration (Cal/OSHA) program to comply with this mandate. The Federal Occupational Safety and Health Act requires the Cal/OSHA program to be at least as effective as the Federal OSHA program. The Labor Code grants broad powers to the Division of Occupational Safety and Health of DIR for assuring the health and safety of workers in the state. Section 6307 of the Labor Code states: "The Division has the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary to adequately enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment." Labor Code section 6303 defines place

of employment as "any place, and the premises appurtenant thereto, where employment is carried on, except a place the health and safety jurisdiction over which is vested by law in, and actively exercised by, any state or federal agency other than the division." Section 142.3 of the Labor Code designates the Cal/OSHA Standards Board within DIR to be the only agency in the state authorized to adopt occupational safety and health standards.

DPR is the lead agency for pesticide regulation in California. The Food and Agricultural Code (FAC), as amended by the 1991 Governor's Reorganization Plan No. 1, gives DPR and the CACs the responsibility of regulating pesticides including protection of employees handling, storing or applying pesticides or working in and about pesticide-treated areas. Divisions 6 and 7 of the FAC, are the statutory authority for regulating the registration, sale, and use of pesticides, reentry into treated areas, and specified activities associated with the storage, transportation, and handling of pesticides or pesticide containers. The director of DPR and the agricultural commissioner of each county, under the direction and supervision of the director of DPR, are responsible for enforcing Division 6 and specified parts of Division 7, and the regulations which are issued pursuant to them. FAC section 11501 states that one of the purposes of Division 6 (Pest Control Operations) and Chapters 1-3.5 of Division 7 (Agricultural Chemicals) is to assure the agricultural and pest control workers of safe working conditions where pesticides are present. FAC section 12980 declares that the development of regulations relating to pesticides and worker safety should be the joint and mutual responsibility of DPR and the Office of Environmental Health Hazard Assessment (OEHHA), and further declares that in carrying out the provisions of Article 10.5 (Pesticide and Worker Safety), the University of California, DIR and any other similar institution or agency should be consulted. FAC section 12981 authorizes DPR to adopt regulations for, but not limited to, worker protection regarding the following subjects related to pesticides: (1) restricting worker reentry into areas treated with pesticides, (2) handling of pesticides, (3) hand washing facilities, (4) farm storage and commercial warehousing of pesticides, (5) protective devices, and (6) posting of fields, areas, adjacent areas or fields, and storage areas. FAC section 12982 provides that DPR and county commissioners under the direction and supervision of DPR, and with the assistance of county health officers and OEHHA, shall enforce pesticide and worker safety laws and regulations within their jurisdiction. FAC section 12985 provides that it is a misdemeanor to order an employee to enter a posted area in violation of any worker safety reentry requirements promulgated pursuant to Article 10.5

PRINCIPLES OF AGREEMENT

DIR, DPR, and CACASA agree that the use of pesticides, entry into areas treated with pesticides, and the storage, transportation, handling and disposal of pesticides and pesticide containers can adversely affect human health. To protect the State's workers, it is necessary to enforce regulations and standards that apply to places of employment associated with these activities.

In order to better protect workers from potential exposure to pesticides, DIR, DPR and CACASA agree to:

1. Promote both technical and policy consultations concerning worker safety issues through formal channels such as the Worker Health and Safety Advisory Group and the Pesticide Registration and Evaluation Committee, and meetings, as well as through informal staff exchanges of information. The agencies will provide technical assistance to each other upon request.
2. Implement a notification system to ensure mutual awareness of illnesses or injuries that may have been caused by exposure to pesticides or suspected violations of pesticide and worker safety laws and regulations at places of employment that are associated with pesticides. Reporting requirements and procedures for data referrals will be described in an implementation document.
3. Develop and implement procedures including cross-training to refer problems found during field investigations by one agency to the other agency which has primary jurisdiction or may be concerned with the problem found.
4. Collect, exchange, and disseminate information on (a) the manufacturing, use, storage, transportation and handling of pesticides and pesticide containers, (b) impacts on worker health and safety from these activities, (c) any efforts to mitigate those impacts, and (d) the classification of illnesses resulting from these activities.
5. Share information on the toxicity of active ingredients, inert ingredients and breakdown products; dermal, inhalation and indoor exposure; the practical treatment of pesticide poisoning; and pesticide injury cases.
6. Consult each other in developing or revising workplace standards and regulations for substances which are, among other things, pesticides which may impact worker health and safety.
7. Recognize that DIR has responsibility for inspection and enforcement of pesticide safety and health standards in workplaces where pesticide products are manufactured, reformulated, packaged, or transported in the channels of trade; in any workplace in emergency response situations, such as fires and spills; at pesticide waste recycling and disposal facilities; for employees who reenter areas, other than fields, where pesticides have been used (exception: employees who enter treated structures as part of the application to test air concentrations before clearing for reentry as required by the pesticide product label or Title 3 regulations); and for non-pesticide aspects of worker safety in all workplaces where pesticides are or have been used.
8. Recognize that DPR and CACs have responsibility for enforcement of pesticide laws and regulations in workplaces that are associated with pesticide use including entry into treated fields. Specific implementation of these responsibilities and the issues listed in Attachment 1 will be described in an implementation document.
9. Recognize that DPR and CACASA will establish procedures that are substantially equivalent to those required by the Labor Code regarding employee rights to file confidential complaints, to have complaints promptly investigated, to talk to inspectors and point out hazards, to be

notified of any job hazard and not be subject to discrimination or retaliation for reporting safety hazards or violations.

10. Recognize that DIR will conduct inspections and enforce pesticide safety and health standards

(a) where the following pesticides are used:

- ethylene oxide
- inorganic arsenic used to treat wood
- ethylene glycol monomethyl ether

(b) in workplaces, including pesticide dealer facilities, where pesticides are commercially stored. DPR/CACs conduct inspections of restricted material permits, sales records, and written recommendations at pesticide dealer facilities.

11. Negotiate an agreement on inspection of certain workplaces where specified pesticides, including formaldehyde, are used, and include such agreement in an implementation document. The agreement will contain provisions for joint inspections where appropriate.

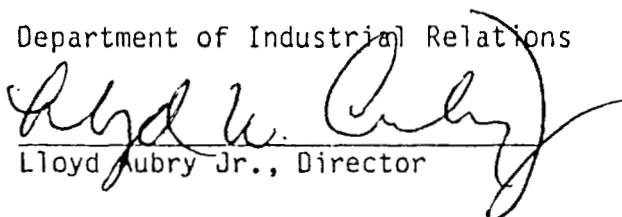
DISPUTE AND CONFLICT RESOLUTION

It is the desire of the parties to establish a speedy, efficient, and informal method for the resolution of interagency conflicts. Conflicts between DIR, DPR, and CACs which cannot otherwise be informally resolved, will be referred to the director of DIR, director of DPR, and the president of CACASA.

To assist the parties in resolving conflicts, one staff person will be appointed each by the director of DIR, the director of DPR, and the president of CACASA representing the interests of the signatories of this MOU.

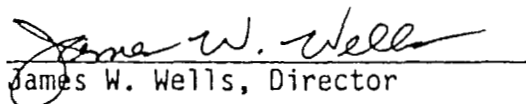
This MOU shall become effective upon the date of final signature and shall continue in effect until modified by the mutual written consent of the parties or until terminated by any party upon a thirty (30) day advance written notice to the other parties.

Department of Industrial Relations


Lloyd Aubry Jr., Director

12/9/92
Date

Department of Pesticide Regulation


James W. Wells, Director

12/3/92
Date

California Agricultural Commissioners and Sealers Association

Joseph Howard
Joseph Howard, President

1-6-93
Date

ISSUES

- Commercial vs end-user storage of pesticides and pesticide containers.
- Commercial vs. end-user transportation of pesticides.
- Specific workplaces that may be unsafe due to exposure to active or inert ingredients or their breakdown products where the Director or CACs exercise authority to prohibit entry of employees.
- Field sanitation and handwashing facilities for field workers, including DIR requests for harvest dates from CACs.
- Warnings of exposure to pesticides listed pursuant to the Safe Drinking Water and Toxic Enforcement Act (Proposition 65) for the protection of workers.
- The Illness and Injury Prevention Program (SB 198 program).
- Hazard communication.